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M.J. Metal Products, Inc. and Sheet Metal Workers
International Association, Local Union No. 207.
Cases 27-CA-15523, 27-CA-15549, 27-CA-15619, and 27-CA-16575

August 27, 2002

## SUPPLEMENTAL DECISION AND ORDER

## BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

The General Counsel seeks summary judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification. On August 10, 1999, the Board issued a Decision and Order, inter alia, ordering the Respondent to make whole Jay Newcombe, Brian Johnson, Shannon Leedall, and Kelly Martin for loss of earnings and other benefits resulting from their discharges in violation of the Act. On July 10, 2001, the United States Court of Appeals for the Tenth Circuit entered its judgment enforcing the Board's Orders.

A controversy having arisen over the amount of backpay due the discriminatees, on October 31, 2001, the Regional Director issued and properly served on the Respondent a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. On November 21, 2001, the Regional Director advised the Respondent that its request for an extension of time to file an answer had been granted and that an answer was due on November 29, 2001. Although its request for an extension of time was granted, the Respondent failed to file an answer.

On December 21, 2001, the General Counsel filed with the Board a Motion for Default Summary Judgment, with exhibits attached. On January 2, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. Thus, the allegations in the motion and in the compliance specification are undisputed.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer

within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has not filed an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatees<sup>4</sup> is as stated in the compliance specification and we will order payment by the Respondent of those amounts to the discriminatees, plus interest accrued on the amounts to the date of payment.

## ORDER

The National Labor Relations Board orders that the Respondent, M.J. Metal Products, Inc., Casper, Wyoming, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, plus interest to be computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws:

Jay Newcombe	\$11,104
Brian Johnson	29,257
Kelly Martin	9,319
TOTAL:	\$49,680

Dated, Washington, D.C. August 27, 2002

Wilma B. Liebman,	Member
William B. Cowen,	Member
Michael J. Bartlett,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>&</sup>lt;sup>1</sup> 328 NLRB 1184 (1999) (Board Cases 27-CA-15523, 27-CA-15549, 27-CA-15619, and 27-RC-7813).

<sup>&</sup>lt;sup>2</sup> Thereafter, on January 12, 2000, the Board issued a Decision and Order in Case 27–CA–16575, granting the General Counsel's Motion for Summary Judgment and finding that the Respondent violated Sec. 8(a)(5) and (1) of the Act by refusing to bargain with the Union. 330 NLRB 502 (2000).

<sup>&</sup>lt;sup>3</sup> Nos. 99–9533, 99–9538, and 00–9507. Subsequently, by Order dated October 31, 2001, the court granted the Board's motion to publish the court's order and judgment.

<sup>&</sup>lt;sup>4</sup> As set forth in the compliance specification, no backpay is requested for Shannon Leedall who suffered no losses as a result of the Respondent's unfair labor practices.